



POLICE DEPARTMENT

In the Matter of the Disciplinary Proceedings :
- against - : FINAL
Police Officer Anthony McCloud : ORDER
Tax Registry No. 938979 : OF
70 Precinct : DISMISSAL

Police Officer Anthony McCloud, Tax Registry No. 938979, Social Security No. ending in [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 2008-0215 and 2009-0100 as set forth on form P.D. 468-121, dated July 21, 2009 and June 18, 2009, respectively, and after a review of the entire record, Respondent has been found Guilty as charged in Disciplinary Case No. 2008-0215. In Disciplinary Case No. 2009-0100, he has been found Guilty of Specification Nos. 2, 5 and 6, Guilty in Part of Specification No. 1, and Not Guilty of Specification Nos. 3 and 4.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Anthony McCloud from the Police Service of the City of New York.


RAYMOND W. KELLY
POLICE COMMISSIONER

EFFECTIVE: On June 12, 2013 @0001Hrs



POLICE DEPARTMENT

The
City
of
New York

May 20, 2013

In the Matter of the Charges and Specifications : Case Nos. 2008-0215 & 2009-0100

- against - :

Police Officer Anthony McCloud :

Tax Registry No. 938979 :

70 Precinct :

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable David S. Weisel
Assistant Deputy Commissioner - Trials

A P P E A R A N C E:

For the Department: Nancy Lichtenstein, Esq.
Adam Sheldon, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For the Respondent: Stuart London, Esq.
Worth, Longworth & London, LLP
111 John Street Suite 640
New York, NY 10038

To:

HONORABLE RAYMOND W. KELLY
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

The above-named member of the Department appeared before the Court on February 10, 2012, October 23, 2012, December 11, 2012, January 25, 2013, and January 29, 2013, charged with the following:

Disciplinary Case No. 2008-0215

1. Said Police Officer Anthony McCloud, assigned to the 70th Precinct, on or about February 29, 2008, at approximately 0824 hours, in the vicinity of [REDACTED], did fail and neglect to safeguard his service firearm, to wit: a 9mm, Glock Model # 26.

P.G. 204-08, Page 2, Paragraph 7 FIREARMS – GENERAL REGULATIONS

2. Said Police Officer Anthony McCloud, assigned to the 70th Precinct, on or about and between February 8, 2008 to February 29, 2008, in the vicinity of [REDACTED], unlawfully possessed a firearm: to wit, Respondent possessed an unregistered Lorcin 9mm semi automatic firearm that he received from his [REDACTED], who he knew or should have known did not have a legal right to possess said firearm. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 CONDUCT PREJUDICIAL
NYS PENAL LAW SECTION 265.01 (1) – CRIMINAL POS[S]ESSION OF A
WEAPON IN THE FO[U]R[J]TH DEGREE

3. Said Police Officer Anthony McCloud, while assigned to the 70th Precinct, at about 0748 hours on December 9, 2010, at 211 Union Avenue, Office of Brooklyn North Investigations, Kings County, did wrongfully and without just cause impede an official Department investigation in that said police officer prevented or interfered with the investigation pertaining to a Lorcin 9[.]mm semi automatic firearm that said police officer received from [REDACTED]: to wit, Respondent did not provide a full and accurate account regarding his knowledge about [REDACTED] prior criminal record.
(As amended)

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBITED CONDUCT
GENERAL REGULATIONS

Disciplinary Case No. 2009-0100

1. Said Police Officer Anthony McCloud, assigned to the 70th Precinct, while on duty, at about 2218 hours on December 31, 2007, at [REDACTED], did abuse his authority as a member of the New York City Police Department in that he forcibly stopped Tristan Edwards without having the requisite legal authority to do so: to wit, While said individual was walking home, Respondent told said individual to stop and then Respondent removed his gun from his holster.

P.G. 203-10, Page 1, Paragraph 4 ABUSE OF AUTHORITY

2. Said Police Officer Anthony McCloud, assigned to the 70 Precinct, while on duty, at the date, time, and location in Specification # 1, did abuse his authority as a member of the New York City Police Department in that he searched Tristan Edwards without having the requisite legal authority to do so: to wit, Respondent put his hands inside said individual's pockets and/or lifted up said individual's shirt.

P.G. 203-10, Page 1, Para 4 ABUSE OF AUTHORITY

3. Said Police Officer Anthony McCloud, assigned to the 70 Precinct, while on duty, at the date, time and location in Specification # 1, did abuse his authority as a member of the New York City Police Department in that he threatened Tristan Edwards with the use of force: to wit, Respondent threatened to "beat up" said individual.

P.G. 203-10, Page 1, Paragraph 4 – ABUSE OF AUTHORITY

4. Said Police Officer Anthony McCloud, while assigned to the 70th Precinct, at about 1238 hours on July 24, 2008, at 40 Rector Street, New York County, did engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: While Respondent was being interviewed by the CCRB regarding an incident that occurred on December 31, 2007, Respondent was unable to provide an accurate account of the incident due to the fact that he failed to prepare a complete notation of the incident in his memo book, and did not prepare any other required NYPD paperwork. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBITED CONDUCT
GENERAL REGULATIONS

5. Said Police Officer Anthony McCloud, while assigned to the 70th Precinct, at about 1238 hours on July 24, 2008, at 40 Rector Street, New York County, did not cooperate at an official CCRB investigation when he was being interviewed as the subject police officer in connection with an incident that occurred on December 31, 2007, to wit: Respondent did not report all the pertinent information, facts, and observations in connection with said incident, and did not provide full and accurate answers to the questions posed by the CCRB. *(As amended)*

P.G. 211-14, Page 1 – INVESTIGATIONS BY CIVILIAN COMPLAINT
REVIEW BOARD

6. Said Police Officer Anthony McCloud, while assigned to the 70th Precinct, at about 1238 hours on July 24, 2008, at 40 Rector Street, New York County, did wrongfully and without just cause impede an official CCRB investigation in that said police officer prevented or interfered with the investigation when he did not provide a full and accurate account of an incident that occurred on December 31, 2007, when the CCRB questioned him about it. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT,
GENERAL REGULATIONS

The Department was represented by Nancy Lichtenstein and Adam Sheldon, Esqs., Department Advocate's Office. Respondent was represented by Stuart London, Esq., Worth, Longworth & London LLP.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

In Case No. 2008-0215, Respondent is found Guilty. In Case No. 2009-0100, Respondent is found Guilty of Specification Nos. 2, 5 and 6, Guilty in Part of Specification No. 1, and Not Guilty of Specification Nos. 3 and 4.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Nina Mickens, Tristan Edwards, Police Officer Veronica Chaparro, Sergeant John Clisti, Captain Timothy Trainor, Detective Rodney Rodriguez, Sergeant Jason Previte, and Detective Susan Wekar as witnesses.

Nina Mickens

Mickens was an assistant supervisor of investigations at the Civilian Complaint Review Board (CCRB). She was the investigator on a complaint that Tristan Edwards brought against Respondent and his partner, Police Officer William Diab. They were assigned to the 70 Precinct. Edwards alleged that Respondent forcibly stopped him at gunpoint, searched him, and threatened to use force against him.

In an interview, Edwards told Mickens that Respondent and Diab stopped him as he was entering his residence at [REDACTED] on December 31, 2007. Respondent had his gun drawn and pointed at Edwards. While on the porch of the residence, the officers had Edwards place his hands on the windows of the house. Respondent searched Edwards's jacket and pants pockets. When Edwards put his hands down, the officers believed that he was reaching for something. The officers pushed him against the glass of the residence, causing the glass to break. They also took him down to the ground as they attempted to handcuff him.

Additional units responded to the location. Edwards was handcuffed and escorted to the Department vehicle that Respondent was driving. While in the car, Respondent threatened to use force against Edwards. After driving a block or two, the officers released Edwards with a summons. Diab pulled Edwards out of the car and threw the personal items that had been

removed from his pockets to the ground. The summons issued to Respondent was ultimately deemed insufficient and dismissed.

As part of her investigation, Mickens reviewed a neighbor's 911 call and interviewed Respondent and Diab. Respondent stated in his interview (see DX 2, transcript) that he and Diab stopped Edwards at Bedford and Clarkson Avenues after observing a fist-sized bulge at Edwards's waistband. Edwards also appeared to be wearing a bulletproof vest. When Respondent approached Edwards to frisk the bulge, he became somewhat uncooperative. Upon lifting Edwards's shirt, Respondent saw that the bulge was a cell phone. He issued Edwards a summons for disorderly conduct (Penal Law § 240.20 [6], congregating with other persons in public place and refusing lawful police order to disperse). Respondent denied in the interview ever being at [REDACTED], handcuffing Edwards, using physical force against him, or placing him in a Department vehicle. He also denied that any additional units responded to the scene.

In addition to Respondent and Diab, Mickens interviewed seven other Department members: Inspector Frank Vega, Sergeant Gabrielle Walls, Police Officer Alisha Noel, Police Officer Julie Casale, Police Officer Melissa Lopez, Police Officer John Pietanza and Police Officer Veronica Chaparro. These members provided statements that were inconsistent with Respondent's statements during the interview. While Respondent claimed that he was not at [REDACTED]

[REDACTED] the others saw Respondent at that address when they responded to a 911 call at that location. Two were able to identify Respondent by name because they had gone to the Police Academy with him. Five of the officers told Mickens that when they arrived at the location they saw Edwards on the ground in handcuffs. They also saw Respondent and Diab place Edwards into their Department vehicle. None of the officers indicated to Mickens that he

saw Edwards wear a bulletproof vest or observed Edwards fighting. Pietanza told Mickens that when he arrived at the location, he saw Edwards on the ground and Respondent and Diab were trying to handcuff him. Because Edwards was moving around, Pietanza aided the officers by grabbing Edwards's arm and placing it behind his back.

Mickens made a referral to the Internal Affairs Bureau (IAB) for Respondent's making of a false official statement.

DX 1 was Respondent's Activity Log for the day in question. Respondent wrote that he conducted a stop at Bedford and Clarkson Avenues at 2218 hours and issued a summons at 2300 hours. Respondent told Mickens, however, that the stop lasted only four minutes. Respondent included neither Edwards's name nor the summons number in his Activity Log entry.

On cross examination, Mickens confirmed that at the July 24, 2008, interview she was aware that Respondent had been shot earlier in the year. Respondent had been out on sick leave, and Mickens spoke with the Medical Division to get clearance to conduct the interview. Mickens did not know what Respondent's duty status was on the day of the interview. She did not ascertain what, if any, medications Respondent was taking at the time.

Edwards told Mickens that he was struck numerous times with an asp, but because he was lying face down he could not see which officer it was who used the asp. No officer at the scene confirmed an asp strike. None of the officers confirmed a broken window, although Mickens saw a broken window when she went to the location on March 17, 2008. While Edwards indicated in a written statement that one of the officers spit on a neighbor, no one else confirmed that. In his oral interview with Mickens, Edwards did not mention anything about the spitting.

Edwards was on parole at the time of the incident. He told Mickens that his parole stemmed from a conviction for robbery. Mickens did not ask Edwards if a weapon was used during the course of the robbery or whether anybody was injured. A background check showed that Edwards had not been convicted of a crime in the last five years, but at one point during the CCRB investigation Edwards returned to prison for violating his parole. Mickens acknowledged that Edwards sued the Department for \$1 million following the incident with Respondent.

Pietanza told Mickens that he had to assist in the handcuffing of Edwards because Edwards was not compliant. While Edwards did not admit to resisting arrest, he stated that he was unable to place his hands behind his back when ordered to do so because his hands were under his body and the officers were on top of him. Edwards was wearing a brown jacket, which was consistent with the description of an individual who had been involved in a commercial robbery earlier in the evening.

Mickens reviewed Edwards's medical records (Respondent's Exhibit [RX] B). Edwards did not sustain any broken bones. She did not recall the medical records indicating that there was alcohol on Edwards's breath when he was treated at the hospital the day after the incident (see RX B, Emergency Nursing Record, p. 2, noting "alcohol on breath" during Physical Exam).

On re-direct examination, Mickens said that Respondent never mentioned to Mickens that he was on medication. He did not appear to be impaired at the interview, or indicate at the interview that he did not remember things or had difficulty understanding the questions.

The lawsuit brought by Edwards was settled for \$25,000.

Upon questioning by the Court, Mickens testified that she was planning on interviewing all of the officers who responded to the scene as part of her investigation. She did not interview the additional officers as a result of anything that Respondent did or did not say.

Tristan Edwards

Edwards testified that on the night of December 31, 2007, Respondent and Diab stopped him as he arrived home at [REDACTED]. Edwards, who was wearing a brown jacket at the time, explained to the officers that he was in a hurry to get inside the house because he was trying to make his parole curfew.

While Edwards knocked on the door of the house to get someone's attention, the officers instructed him to turn around. When Edwards turned around, he saw Respondent draw his gun. Respondent returned the gun to where he pulled it from and searched Edwards. When Edwards went to put his hands down after the search, Respondent said that he was reaching for something and "slammed me into my house." A pane of glass broke.

Edwards testified that he was grabbed by another officer while Respondent was on top of him. One officer grabbed his leg and hit him with a baton. Another sat on him, "trying to choke and punching me in my private area." The officers handcuffed Edwards while he was on the ground and walked him to their vehicle.

Edwards testified that before placing him in the car, the officers mentioned a robbery and seeing him "drop something somewhere." They drove down the block and searched in trash cans. While in the car, Edwards asked Respondent to loosen the handcuffs. Respondent replied, "Shut the fuck up before I beat you up." After five or ten minutes in the car, the officers released him.

On cross examination, Edwards confirmed that at the time of the incident he was on parole for assault and robbery. He did not use a weapon during the robbery and the victim was not injured. He did not know what was taken during the robbery. Although he was not guilty of the crime, he pleaded guilty in court because he was scared and did not know what to do. He

was, therefore, lying to the court when he entered his plea. For his conviction he spent two years in prison. After his encounter with Respondent, he returned to jail for a year for violating parole due to police contact.

Edwards testified that his mother's friend dropped him off at home before the incident. In a written statement that Edwards provided to the attorney who represented him in his lawsuit, however, he stated that his mother and the friend dropped him off.

Edwards stated that he was approximately a block from his house when he first observed Respondent. The officers told Edwards that he matched the description of a robbery suspect and that they wanted to speak with him. While on the porch of the house, Respondent pointed his gun at Edwards. He recalled that the first two officers, and then later additional officers, were on top of him. He could not recall exactly how many officers were involved.

The officers hit Edwards with their hands and with objects. Edwards described this baton-like object as "a hard piece of metal that flips out" and made a snapping sound. The strike was to Edwards's ankle, but he did not recall which officer was holding the object. One of the officers spit in the direction of a neighbor who came outside to see what was going on.

When asked if he was resisting arrest, Edwards testified, "I wasn't resisting arrest if I am getting beat up."

When the officers placed Respondent in their vehicle, he was bleeding from his ankle, kneecap and head. He did not ask anybody for medical attention. After driving for a little bit, one of the officers threw Edwards's property at him and Respondent issued him a summons. The officers dropped him off a couple of blocks from home. It was a struggle for him to walk.

The next day, Respondent went to Kings County Hospital Center. Edwards was treated in the emergency room for an ankle sprain and prescribed ibuprofen. When asked if he had any

"broken bones," Edwards said, "Um, not that I can remember." When asked if he had any "fractures," he answered, "I know my ankle was like – I am not going to say fractured, but it was swollen. I don't know what you compare that to. It was like twisted my leg. I had to wear an ankle brace and get a cane." He was not told at the hospital that he had the odor of alcohol on his breath. He denied being intoxicated on the night of the encounter (see RX B, Chart Review, p. 1, stating that examination of Edwards began at 0956 hours on Jan. 1, 2008).

That day, after leaving the hospital, he saw Respondent driving. Respondent smiled at him but Edwards did not know what was so funny.

Edwards's lawsuit against the Department resulted in a settlement for \$25,000. After lawyers' fees, Edwards received \$15,000.

Police Officer Veronica Chaparro

Chaparro previously was assigned to the 71 Precinct. At approximately 2215 hours on December 31, 2007, she and her partner responded to a radio run for an assault in progress on [REDACTED]. Upon arriving at the scene, she observed Respondent and Diab already there with Edwards handcuffed on the porch of the house. Although Chaparro and Respondent were assigned to adjoining precincts, she knew him because they had gone to the Police Academy together.

Respondent told Chaparro that the situation was under control. Chaparro did not see Respondent fight with Edwards, but she did see Edwards fidgeting on the ground. He was not wearing a bulletproof vest, and Chaparro did not see a bulge in his pocket. Chaparro observed Respondent and Diab bring Edwards to his feet and place him in a Department vehicle. As

Chaparro was leaving, other units started arriving at the location. She did not recall how many officers responded.

On cross examination, Chaparro confirmed that she did not see Respondent use any force against Edwards. She did not observe any misconduct. She did not know if any property was removed from Edwards before she arrived at the scene.

Chaparro conceded that she did not make any Activity Log entries with respect to the incident. She was on the scene for less than five minutes. During that period, she remained at the stairs going up to the porch and never actually entered the porch area. The lighting was dark. She did not hear Respondent and Edwards say anything to each other. She did not observe any sort of violent struggle or any injury to Edwards.

Sergeant John Clisti

Clisti previously was assigned to IAB. In September 2009, he was assigned to investigate an allegation that Respondent and Diab made false statements to CCRB.¹ On October 15, 2009, Clisti conducted an official Department interview of Respondent (see DX 3, transcript). Before questioning Respondent, Clisti had him listen to the recording of his CCRB interview.

At trial, Clisti explained his determination that Respondent made false statements to CCRB. Respondent stated to CCRB that he was never at [REDACTED] when in fact he was. He stated that no other officers responded to the scene of the incident, but in fact several officers responded. Respondent stated that there was no force used in the stop, but force was

¹ Diab pleaded Guilty to charges and specifications on October 11, 2011. These were: an unlawful stop of Edwards; inability to provide an accurate account to CCRB because of inadequate Activity Log entries and no other paperwork; and failing to give a full and accurate account to CCRB – an account he later corrected at his official Department interview with IAB. The Police Commissioner approved the recommended disposition of the forfeiture of 35 vacation days on September 26, 2012. See Case No. 2009-3190.

used. Finally, Respondent stated that Edwards was not handcuffed or placed inside a Department vehicle, when both of these actually occurred.

While Respondent told CCRB that he was not at [REDACTED], he stated in his official Department interview with IAB that it was possible he stopped Edwards there. Clisti testified that Respondent gave several reasons for telling CCRB this. First, "he couldn't understand why the CCRB investigator would ask him a question like that." Respondent alleged that the CCRB investigator asking him a question was different from an IAB investigator asking the question. Finally, Respondent conceded that he "should have given it more thought and he didn't understand the weight of the question." He had no reason to believe that he was in the area of [REDACTED] and was unsure of his exact location because he was focused on "the perp." The CCRB investigator gave him no reason to believe he was on [REDACTED]. Respondent maintained that he did not intentionally answer the question falsely.

While Respondent told CCRB that he did not have any sort of physical interaction with Edwards, he stated in his official Department interview that he did in fact place his hands on Edwards. Respondent explained this by saying that "he did not give the situation any real thought, his mind was in other places." Additionally he claimed that the CCRB investigator's definition of force was different from that of IAB. Because he did not know what the CCRB investigator meant by force, he thought that she meant striking instead of just touching.

While Respondent told CCRB that Edwards was not handcuffed, he stated the opposite in his official Department interview. When asked to explain this discrepancy, Respondent contended that there was a second CCRB interview that would clarify the matter. He testified at the CCRB based upon his normal course of action and not specifically for this event. He did not recall cuffing Edwards and "didn't think the question had any real weight to it."

Similarly, while Respondent told CCRB that he never placed Edwards inside a Department vehicle, he stated the opposite in his official Department interview. When asked to explain, Respondent stated that he saw nothing wrong with placing Edwards in the vehicle and "hadn't given it much thought." Respondent again raised the issue of a second, clarifying CCRB interview. Respondent further explained that he "wasn't in the right frame of mind" during the CCRB interview because of the shooting by his wife.

Clisti's investigation showed that several units responded to the scene at [REDACTED] Street, and Respondent confirmed this in his official Department interview. In his CCRB interview, however, Respondent stated that no other officers were present.

Respondent was interviewed about the December 31, 2007, incident just one time by CCRB. There was no second interview.

On cross examination, Clisti confirmed that Diab was also accused of interfering with an investigation by giving misleading statements at an interview.

Clisti did not know before Respondent's official Department interview that Respondent had been shot by his wife and hospitalized. He was not aware that Respondent was on sick leave for many months after the shooting and that he had returned to work just two weeks prior to the CCRB interview.

On the summons that Respondent issued to Edwards, he indicated that the stop occurred on Bedford Avenue. Respondent explained to Clisti that he first observed Edwards at Bedford and Clarkson Avenues and a chase ensued from that location to [REDACTED]. Respondent indicated to Clisti that it was entirely possible he went to [REDACTED] even though he told CCRB he was not there.

In his official Department interview, Respondent did not deny that he had physical contact with Edwards or that he handcuffed him. One of the answers he gave Clisti when asked to explain the statements he made to CCRB on these subjects was that he had made a mistake. He indicated to Clisti that he did not focus as carefully as he should have during his CCRB interview.

Clisti denied that Respondent's statements at the official Department interview were substantially accurate as to what actually occurred on December 31, 2007. Clisti explained, "When I ask someone a question I expect a direct answer . . . not 20 or 30 minutes of different reasons why he couldn't give me an answer." The interview lasted an hour and 44 minutes because the investigators could not get direct answers to their questions. Clisti, nevertheless, conceded that Respondent did not make false statements at his official Department interview, as he ultimately corrected during the course of the interview the inaccuracies that he had made at CCRB. Respondent indicated to Clisti that he had time to think about the incident since the CCRB interview and that he took the IAB investigation into the matter more seriously than he took the CCRB investigation. He also indicated that some of the answers he gave to CCRB were consistent with what he would routinely do in situations but may not have been fact-specific as to what occurred on December 31, 2007. He was more fact-specific at his official Department interview with Clisti.

On re-direct examination, Clisti testified that Respondent never admitted in his official Department interview to being on the porch at [REDACTED]. Respondent stated in the interview that Edwards wore the fabric shell of a bulletproof vest, but no other officer at the scene said anything about Edwards wearing such a garment. Respondent told Clisti that one of

the reasons he stopped Edwards was because there was a robbery in the area. Respondent did not say anything about a robbery to CCRB.

Captain Timothy Trainor

Trainor was assigned to the Brooklyn North Investigations Unit. He supervised the investigation after Respondent was shot by [REDACTED], whom Trainor indicated was named Person A. Person A shot Respondent with his own off-duty firearm on February 29, 2008. At the time of the shooting, [REDACTED].

The officers who responded to the scene recovered the firearm from the floor inside the entrance of the apartment. The gun was fully assembled but unloaded. The magazine had been removed and the slide was locked to the rear.

Trainor did not interview Respondent for the first time until December 9, 2010 (see DX 8, transcript), because the prosecutor in Person A's criminal prosecution requested that the Department wait. Person A was ultimately convicted of assault in the second degree and sentenced to probation.

Respondent told investigators that he kept his holstered gun in his dresser drawer. This was in violation of the Department rule that required members to take all reasonable steps to safeguard their firearms. The firearm was kept in a top drawer of the dresser, which Trainor asserted was two-and-a-half or three feet high. It was not locked in a container. DX 4a and b were crime scene photographs of the dresser.

In a search of Respondent's apartment on the day of the shooting, detectives recovered various rifle parts, shotgun parts, and ammunition, as well as a partially assembled BB gun and an unloaded Lorcin 9-millimeter semi-automatic pistol. The detectives found the rifle parts in

the bedroom closet, the Lorcin handgun in the same bedroom drawer as the off-duty firearm, and the ammunition for the handgun in the kitchen closet. When detectives found the Lorcin, it was fully assembled except for missing plastic handle grips. Laboratory results indicated that the gun was operable. It was not registered to anybody.

Respondent told Trainor in the December 9, 2010, interview that the gun parts and the Lorcin belonged to [REDACTED], Person B. Person B asked Respondent to hold these items while Person B was in jail. Respondent told Trainor that the items were inoperable when he received them from Person B. Respondent remembered the Lorcin as disassembled and missing parts, such as springs. He could not recall the specific date he received the items from Person B, but he must have had them for at least 20 days prior to the shooting by Person A. Respondent did not feel it was necessary to report the handgun to the Department.

In the interview, Respondent stated that he knew Person B had been arrested for “making a domestic, some minor things,” but he was not aware that Person B was arrested in 2003 for felony criminal possession of a weapon. If Respondent knew that Person B had been convicted of a felony, he thus would have known that it was illegal for Person B to possess a handgun.

DX 5 was Person B’s criminal record. According to the record, Person B was arrested in April 2003 for criminal possession of a weapon in the second and fourth degrees, grand larceny in the third degree, and criminal possession of stolen property in the fifth degree. This resulted by guilty plea in a conviction for possession of a loaded firearm, a felony. Person B was sentenced to five years’ probation. In August 2007, Person B was arrested for rape in the first degree and assault in the second degree. This resulted by plea in a conviction for third-degree assault. On January 30, 2008, after his second conviction, Person B was sentenced to one to three years in prison for violating his probation.

After the December 2010 interview, because investigators still had questions regarding Respondent's knowledge of Person B's criminal record, they looked at Respondent's application paperwork to the Department. They found that in his application booklet (DX 7), Respondent indicated that Person B had been arrested on a weapons possession charge. Respondent signed the booklet in the presence of a notary public on February 24, 2005. On May 23, 2005, he submitted a follow-up document regarding the issue of securing weapons and the arrest records of family members (DX 6). Respondent indicated that Person B had been arrested in 2001 on unknown charges.

Trainor conducted a second interview of Respondent on February 10, 2011 (see DX 9, transcript). After Trainor played Respondent the recording of the December 2010 interview, Respondent stood behind the accuracy of his statement concerning his ignorance of the specifics of Person B's criminal record. When Trainor subsequently showed Respondent the 2005 application paperwork indicating that Person B had been arrested for weapons possession, Respondent stated that he did not recall writing that on the form but he acknowledged it was his handwriting on the document.

On cross examination, Trainor confirmed that Respondent did not indicate on the application forms whether Person B had been arrested for felony or misdemeanor weapons possession. When Trainor showed Respondent the application paperwork at the February 2011 interview, Respondent stated that it reminded him of Person B's weapons charge and that he would have answered questions about Person B's record differently had he been reminded sooner.

Trainor was aware that Respondent was seriously injured in the shooting, underwent skin grafts, and spent approximately eight weeks in the hospital. Trainor did not recall how long Respondent was out on sick leave. He did not know that Respondent was on medications like

Percocet and OxyContin. He did not know how long Respondent had been back at work at the time of the December 2010 interview.

Person A used Respondent's off-duty Glock 26 firearm to shoot him. While Respondent stated that he broke the gun down to its parts before the police responded, the on-duty officer who recovered the weapon told Trainor that it was fully assembled other than the magazine being removed.

Respondent told Trainor that the Lorcin was missing its grips when he received it from Person B. Trainor saw the Lorcin at the scene but a member of the Crime Scene Unit (CSU) recovered the gun. The Glock 26 and the Lorcin were kept in the same dresser drawer.

Respondent indicated to Trainor that he took possession of the weapons from Person B because Respondent did not think they could just be thrown out, and he wanted to assist Person B in returning the weapons or destroying them in a more formal method. Respondent told Trainor that he was unaware of the proper process for getting rid of weapons, but it was his intention to figure that out. To Trainor's understanding, weapons or parts of weapons should be surrendered to the police for securing and proper disposal.

On re-direct examination, Trainor confirmed that Respondent never stated before the commencement of his official Department interviews that he was taking medication or was not in the right state of mind to speak. Trainor did not receive information from Respondent's supervisor on those days that Respondent could not perform his duties.

Respondent told Trainor that he would have returned the Lorcin and other gun parts to Person B had he asked.

On re-cross examination, Trainor confirmed that Respondent indicated to him that he believed Person B had a valid license or permit for the weapons.

Detective Rodney Rodriguez

Rodriguez had been assigned to the Firearms Analysis Section (FAS) for the last six years. He was responsible for examining firearms and ammunition for identification and operability. He received nine-and-a-half months of specialized training on firearms operability and had examined over 1,500 firearms. On approximately 50 occasions he was qualified in court to testify as an expert witness on the operability of firearms. He was deemed an expert for the instant trial.

Rodriguez was the technical reviewer on the case of the Lorcin. He reviewed the evidence and paperwork but did not actually conduct the examination of the gun.

The operability of the Lorcin was tested by firing rounds into a tank of water. The gun was deemed operable. Rodriguez signed off on the Firearm Examination Report (FER) (DX 10) on March 3, 2008.

Rodriguez explained that members of the Department were not issued Lorcin 9-millimeter handguns because they were made cheaply, unreliable, and broke often.

FAS also received a BB gun that was recovered from Respondent's residence.

On cross examination, Rodriguez confirmed that the firearms evidence in Respondent's case arrived at FAS in boxes. Because Rodriguez did not have an independent recollection of receiving the boxes, he did not recall if the Lorcin's slide was attached upon its arrival at the laboratory. Nor did Rodriguez know what condition the trigger was in. Rodriguez testified that it would have been noted in the FER if the examiner needed to replace any parts in order to fire the gun.

According to the report, there was no ammunition in the boxes. The Lorcin did not arrive with a magazine, and there were no grips on the handle of the gun. There were no other missing parts. As the reviewer, Rodriguez handled the firearm and racked the slide.

Sergeant Jason Previte

Previte previously was assigned to IAB. He responded to Respondent's residence after the shooting on February 29, 2008. He waited outside the apartment while CSU executed a search warrant. Detective Susan Wekar of CSU found the Lorcin in Respondent's apartment, Previte vouchered it. When Wekar handed the gun to Previte, it was already safeguarded in a bag or box. There were no grips on the handle, but no other parts were missing. "[I]t appeared to be, you know, just a regular gun without grips on it." Previte transported the gun to the 75 Precinct station house and requested that it be sent to the laboratory (see DX 11, Property Clerk's Invoice). Previte also vouchedered the BB gun that was recovered in the apartment.

On cross examination, Previte testified that he never entered Respondent's apartment. He believed that the slide of the Lorcin was locked to the back. He did not recall if the Lorcin came with a magazine. The gun's trigger was intact.

Detective Susan Wekar

Wekar had been assigned to CSU for 10 years. She assisted in the search of Respondent's residence on February 29, 2008. Upon her arrival at the apartment, members assigned to the 75 Precinct, IAB, Investigations, and CSU were already there. While inside the apartment, Wekar recovered various firearms, firearm pieces, and cartridges. Wekar took photographs of the scene and the evidence she found there. DX 12c was a photograph of the

Lorcin; DX 12a and b showed the bedroom dresser on which the Lorcin was found. The dresser was approximately 3'7" tall.

Wekar found the Lorcin in one piece. It was missing grips on the handle. To safeguard the firearm, Wekar pulled the slide back and probably stuck in something to obstruct the slide from moving forward. She then packaged it in a box and handed it to Previte. At no point did she assemble, disassemble, or manipulate the gun in any way. DX 13 consisted of photographs of the packaged Lorcin. Wekar also packaged a BB gun that she recovered in Respondent's apartment that day. A lot of ammunition also was recovered, but she was not certain what kind.

On cross examination, Wekar testified that she arrived at Respondent's apartment at approximately 1020 hours on February 29, 2008. Respondent was no longer at the scene. Although Wekar was aware that a Glock 26 firearm had been recovered before her arrival, she did not know who recovered it or exactly where it was found. Wekar found the Lorcin and the BB gun on top of the dresser, not in a drawer. She did not know if, prior to her arrival, someone had handled the Lorcin or taken the guns and placed them on top of the dresser. When she took the photographs of the bedroom, there was no ammunition on top of the dresser.

The Lorcin did not have a bullet in its chamber, nor did it have a magazine. The slide was not pulled back. According to the FER, no trigger pull test was conducted. Wekar did not know if any parts, other than the handle grips, were missing. Ammunition was recovered in the living room, kitchen closet, and bedroom closet. No ammunition was recovered from right next to the Lorcin.

On re-direct examination, Wekar testified that the dresser was six or seven feet away from the bedroom closet.

On re-cross examination, Wekar stated that she did not recall if she had any difficulty pulling back the slide of the Lorcin.

Respondent's Case

Respondent testified on his own behalf.

Respondent

Respondent, an eight-year member of the Department, was a very active police officer prior to December 31, 2007. Each month he made six to eight arrests and issued at least 20 criminal court summonses.

On December 31, 2007, Respondent and Diab were working in uniform and a marked Department vehicle. They stopped Edwards at approximately 2200 hours that day. Respondent explained that earlier in the day a robbery with a firearm had taken place. The perpetrator was described in a radio transmission as a man wearing a bulletproof vest. It was this description that made Respondent interested in Edwards.

Respondent "actually made the stop" of Edwards on [REDACTED] and Bedford Avenue. Edwards was not cooperative, and the officers chased after him for a few blocks to his residence. On the porch of [REDACTED] Edwards began to fight. Edwards pushed and shoved in an attempt to get away. Furthermore, he would not move his hands to where they could be seen. The officers had to struggle with him to get his hands out from underneath his body.

Other officers arrived at the scene to render assistance in handcuffing Edwards, although Respondent did not request it. Once Edwards was handcuffed, there was no need to use any

force against him. Edwards walked with Respondent to the Department vehicle. Respondent searched Edwards and placed him in the back seat of the car. Respondent did not recover anything during the search. Respondent gave Edwards a summons for disorderly conduct "for the raise of public alarm in the area, also, the fighting and flailing his arms at the Officers." After being issued the summons, Edwards was released. The entire incident lasted 10 to 15 minutes.

On February 29, 2008, Respondent informed [REDACTED], Person A that he was [REDACTED]

[REDACTED]. Person A just had moved back in with Respondent approximately one month earlier. [REDACTED]

[REDACTED] while an angry Person A argued with Respondent.

While Respondent was lying in bed, Person A opened the dresser drawer and stated, "Do you think I won't shoot you?" Respondent had his off-duty firearm, a Glock 26, stored in its holster in the drawer. Respondent conceded that it was poor judgment for him to keep the weapon in the drawer and that it was also in violation of Department rules concerning the proper safeguarding of firearms.

Person A shot Respondent in the shin. The bullet traveled up his leg to his upper thigh. At the time, one child was in the bedroom and the other was in the living room.

After being shot, Respondent stepped into the hallway. He was bleeding heavily. Person A yelled and pointed the gun at him as he crawled toward the front of the apartment and then hopped on his good leg outside to the balcony. Person A followed him outside, where she handed him the gun. Respondent brought the weapon back inside and sat down on the floor in front of

the sofa. He placed the gun on the floor directly beside him. Person A called 911. Before the police arrived, Respondent made the weapon safe by removing the magazine and ensuring that there was no bullet in the chamber.

When the police arrived, Respondent handed the gun to a responding officer. Respondent was in and out of consciousness at the time. The officers carried him outside to an ambulance. Along the way, they had to slap his face a couple of times to keep him awake.

At the hospital, Respondent was rushed into surgery. A fasciotomy was performed, in which his leg was opened to relieve pressure, then sutured like a football. He later received a skin graft. He also had a fracture in his leg.

Respondent spent an initial period of three or four weeks in the hospital and had to return to the hospital for two subsequent stays. In addition to blood thinners, he also was on the narcotic painkillers Percocet and OxyContin. As a result of the shooting, he still experienced bouts of infection and was at risk of amputation.

Respondent did not return to work until July 2008. The July 24, 2008, CCRB interview was the first time that he was questioned about his encounter with Edwards. He told the investigator that he never went to [REDACTED], no force was used against Edwards, he never was handcuffed or placed in a Department vehicle, and no other officers responded to the scene.

When asked why he gave these inaccurate answers to CCRB, Respondent explained that he did not know what he was going to be asked about when he received the notification for the interview. He only had "a name." He did not "have much time to think about the situation," so when he was unsure, he answered based on his typical actions instead of on a specific recollection of the encounter with Edwards. Prior to the interview, he did not review any of the

police reports relating to Edwards. Nor did he speak about the incident with his partner or any of the other officers who responded to the scene.

Respondent exercised poor judgment in the inaccurate answers he gave CCRB, but it was not his intention to mislead them or obstruct the investigation. He simply was unprepared for the interview and answered “out of habit.” He admitted that he did not take the interview as seriously as he should have.

At his subsequent IAB interview, Respondent told investigators that he was at [REDACTED] [REDACTED] and used force to stop Edwards. He also told IAB that he handcuffed Edwards and placed him in a Department vehicle. Respondent testified, however, that he did not “threaten him with the use of force and threaten to beat him up.” He did not point his firearm at Edwards.

Respondent searched Edwards because he believed he might have a firearm. This belief was based on the fact that Edwards ran away from the officers when they approached him, many individuals carried guns on New Year’s Eve so that they could fire shots at midnight, and Edwards was wearing the shell of a bulletproof vest, consistent with the radio transmission description of the robber with a firearm.

Respondent testified that his brother Person B was 10 to 11 years older. At some point prior to the February 29, 2008, shooting, Person B informed Respondent that he was going to jail for the misdemeanor of third-degree assault. Person B had weapons from his prior employment that he wanted to throw out in the garbage. Respondent believed that Person B used to work for a probation department, so it made sense to him that Person B might have weapons.

Respondent described what he received from Person B as “three rifles and parts and a handgun and parts. They were all inside of . . . two garbage bags.” Respondent also described his conversation with Person B. Respondent told Person B that “it was most likely a fluke” that his

employer did not ask him to turn in the “parts” because “I’m sure that they were registered to him.” Probation would ask for the items to be returned and “they’re not going to buy that you threw it out.” To protect Person B and Person B’s “integrity,” Respondent retained the items.

Respondent removed the Lorcin and BB guns from the bag and placed the rest of the firearm pieces in his closet. It was his “understanding” that the Lorcin was not functional because it “was missing a piece off the handle. It was missing a metal piece that slid up the back of the gun, and the trigger was . . . [l]ike it was like no resistance at all.” Respondent stored the Lorcin in a top drawer of the dresser. He never placed any ammunition in it. It was his intention to turn in the Lorcin when Person B was released from jail, either to the precinct or Person B’s employer.

Respondent indicated on his initial application to the Department that he had [REDACTED] with a weapons possession charge. He further indicated on May 23, 2005, that [REDACTED] had been arrested in 2001 for unknown charges. When Respondent told Trainor at his 2010 interview that he had no knowledge of Person B’s weapons possession charge, he had forgotten what he wrote on his application. A review of his application materials refreshed his memory. He never saw a printout of Person B’s criminal record before the interview. He was not trying to mislead Trainor with respect to Person B’s record.

When Respondent received the Lorcin from Person B, he believed that Person B had a legal right to possess it due to his job. He realized now that this was “inaccurate.” He since found out that Person B lied to him and his entire family about working for probation authorities.

On cross examination, Respondent confirmed that he was cleared for duty by the Medical Division before returning to work in July 2008, on restricted duty status. He knew at the time of his CCRB interview that he was supposed to answer questions truthfully. He was informed

beforehand that the interview would be about the incident with Edwards, but he did not recall if he was given an "allegation sheet" to review.

Although it was not illegal for Edwards to wear a bulletproof vest, it made Respondent very suspicious. He did not make an entry in his Activity Log about the bulletproof vest, but he believed that he noted it on the back of the summons he issued Edwards. Respondent told the CCRB investigator that he observed a bulge by Edwards' waistband, but he again did not enter that information in his Activity Log. He did not prepare a Stop, Question and Frisk Report Worksheet (UF-250) for the encounter.

When the CCRB investigator asked him if he received any calls about suspicious activity earlier in the day on December 31, 2007, Respondent replied that he did receive calls but they did not have anything to do with Edwards. In contrast, during his interview with IAB over a year later, he stated that his suspicion of Edwards was based on a robbery that had taken place earlier in the night. The robbery was transmitted over the radio at approximately 2000 hours. Respondent made no mention of the robbery in his Activity Log, although at trial he thought that he did.

Respondent entered in his Activity Log that he issued a summons at 2300 hours, but he did not enter any of Edwards's pedigree information, the summons number, the offense committed, or the basis for the stop. His Activity Log entry regarding the encounter was, therefore, of no assistance during his CCRB interview.

Respondent agreed that his firearm was loaded and fully assembled when Person A removed it from the drawer to shoot Respondent that day. His two young children slept in his room during that period, but they would not have been tall enough to reach the drawer because, he contended, the dresser was approximately four feet tall.

Respondent admitted that he was close with Person B. They spent holidays together, spoke on the telephone once or twice a week, and Person B at times stayed at Respondent's apartment. Although Respondent knew when he applied to the Department that Person B had been arrested for possessing a weapon, he did not know until his December 2010 interview that Person B had been convicted of a felony. He never specifically asked Person B why he was arrested or for how long he was going to jail. Respondent explained, "We don't really discuss things like that. I thought I knew everything about him."

Nevertheless, based on what Person B told him, Respondent believed at the time that there was an order of protection issued against Person B and that he was convicted of misdemeanor assault. He was to be sentenced to approximately eight to twelve months. Respondent stated in the December 2010 interview that he would have given the weapons back to Person B had Person B asked for them.

Respondent never asked Person B to produce a license for the Lorcin. He believed that Person B was licensed through his employment. Respondent asserted that there was a lot of paperwork in the bag that Person B brought him and assumed that the proper documentation for the Lorcin was included. There was a bill of sale for the "rifle." Respondent did not check to see if the gun was registered. According to Respondent, there was no reason for him to believe that anything Person B gave him was illegal.

Respondent did not test the firearm, but he assumed that it was inoperable because of the missing pieces.

On re-direct examination, Respondent recalled hearing a radio transmission regarding a robbery in progress at a store on Flatbush Avenue on December 31, 2007. A shot was fired during the robbery. The store was located approximately five blocks from where Respondent

first saw Edwards. Respondent claimed that the stop occurred approximately 45 minutes after the robbery was transmitted over the radio.

Upon review of the Sprint report for the robbery (RX D), Respondent testified that the transmission indicated that there were two male suspects, one of whom was wearing a brown hoodie. The robbery took place on Flatbush Avenue between Linden Boulevard and Martense Street. The Sprint did not include anything about a suspect wearing a bulletproof vest, but according to Respondent, that information was broadcast over the radio by the sector that responded to the robbery. Respondent did not make any Activity Log entries about the robbery because the robbery was not his job. He claimed, "In your book are jobs that you show up to. I was only doing a canvas for the suspects so I didn't put that in my book that I was looking for suspects." Respondent told the CCRB investigator that the radio transmission concerning the robbery had nothing to do with Edwards because while he suspected Edwards's involvement when he first made the stop, he no longer did by the conclusion of the stop.

Respondent explained that the paperwork in the bag Person B gave him "was a Bill of Sales for weapons, and it appeared to be the weapons that were in the bag." He did not spend time looking to see if the paperwork and firearms matched up with each other. He explained, "I saw one was for a shotgun, and I had shotgun parts, and I saw one for AK parts, and I saw one for that, and then I didn't look anymore."

Although Respondent had a safe in his closet, he did not lock the firearm in there on February 29, 2008, because he expected to be alone. His [REDACTED] had been living elsewhere for six to eight months.

On re-cross examination, Respondent confirmed that he never conducted an identification procedure for Edwards. He called the station house and requested a show-up be conducted between the robbery complainant and Edwards, but was informed that they were no longer looking for suspects.

Upon questioning by the Court, Respondent testified that he was most likely taking painkillers on a daily basis even after he returned to work in July 2008. His notification for the CCRB interview included the date and time of the encounter with Edwards.

FINDINGS AND ANALYSIS

Case No. 2008-0215

On February 29, 2008, Respondent's [REDACTED] shot him in the leg with his Glock 26 firearm at the [REDACTED] residence. The gun had been lying on a dresser in the [REDACTED] bedroom. Respondent essentially admitted that he failed to safeguard this weapon and as such is found Guilty of Specification No. 1 in this case.

Because there was a shooting in the residence of a member of the service, the Internal Affairs Bureau and the Crime Scene Unit investigated. A search of the residence was performed, and an additional firearm was found. This was a 9-millimeter Lorcin semiautomatic pistol.

In the second specification, Respondent is charged with possessing the Lorcin. It is alleged that Respondent received the gun from his brother, Person B, that the gun was not registered under a license, and that Respondent knew or should have known Person B had no legal right to possess the gun.

Respondent admitted that he took possession of the weapon from his brother, Person B McCloud. Respondent admitted that Person B told him that he had been sentenced to a term of

incarceration for misdemeanor assault. He asserted that Person B came to him with a bag of gun "parts" and wanted to dispose of them. Respondent advised that it would be improper and said he would hold them for him until he was released. Respondent asserted that when he received the Lorcin from Person B, it was "in pieces." The grips were missing, as well as some part from the rear of the gun. He looked at it as gun parts and did not think it was operable.

The physical evidence belies Respondent's claims about the Lorcin. It was displayed in the trial room and was deemed DX 13. At most, the grips had fallen off the handle and there possibly was a piece missing from the sight. Otherwise, the gun appeared to be operable. In fact, it was tested by the Firearms Analysis Section and was found to be operable.

The next question is whether Respondent knew that Person B was not authorized to carry the weapon. Respondent asserted that Person B was a probation officer and therefore was authorized to carry the weapon. This is not credible. Whether or not Person B told Respondent this, he should have known that there was no chance Arnold was a law enforcement officer. Respondent stated in his Department employment application paperwork (DX 6 & 7) that ■■■■■

■■■■■ had a criminal record, including a weapons possession charge. Even if Respondent assumed that the charges were dismissed or resulted in not-guilty findings, he supposedly accepted without qualification Person Bs statement that he was an officer. In light of Person B's record, this makes no sense.

Moreover, Respondent's testimony about Person B's desire to dispose of the weapons is incredible in light of the claim that he worked for probation. A real probation officer would have known that he could not just throw out weapons into the trash, and Respondent, as a police officer, would have recognized this. Further, Respondent asserted that it was his intention to turn in the guns, but why would he have done that if he believed ■■■■■ was allowed to possess

them? Finally, while Respondent claimed to be close with Person B, speaking to him weekly and seeing him often, Person B somehow was able to fool him into believing that he was a probation officer. Respondent's claims make no sense.

As such, the Department proved that the Lorcin was operable and that Respondent knew it was operable, unlicensed and unregistered because he knew, or should have known, that Person B had no authority to possess it. Thus, Respondent is found Guilty of Specification No. 2.

In the third specification, Respondent is charged with failing to give "full and accurate" answers concerning his knowledge of Person B's criminal history during his official Department interview on December 9, 2010, thereby impeding the investigation. On that date, Respondent said that he did not know, when he was hired in 2005, that Person B had been arrested in the past. In fact, Respondent wrote on his employment application paperwork that Person B was charged with weapons possession, and that he was arrested in 2001 for an unknown charge. When Respondent was reminded of this at a follow-up interview on February 10, 2011, he admitted that if he had known of his application paperwork, he would have answered differently. He testified at trial that he had forgotten what he had written down "six years ago, seven years ago."

Respondent's claim makes no sense. It is not a matter of remembering what he wrote, it is a matter of remembering that [REDACTED] had been arrested. That is not something one tends to forget.

Moreover, Respondent's non- "full and accurate" answers impeded the investigation. The lead investigator, Trainor, had to pull Respondent's application paperwork to find what he previously wrote about Person B's criminal history. Cf. *Case Nos. 2010-0218 & 2010-0272*, pp. 40-41 (Mar. 26, 2012) ("There is no evidence that [investigator] took any steps after the interview that he otherwise would not have taken, like interviewing [other witnesses]"). Also,

this was not a mere denial of misconduct, cf. Patrol Guide § 203-08, Note, as knowing of Person B's criminal history at the time of Respondent's application was not misconduct. Finally, there was no reason to give these false answers if it was not to impede investigators' discovery of the fact that Respondent knew he was holding a gun for someone with a significant criminal record.

Accordingly, Respondent is found Guilty of Specification No. 3.

Case No. 2009-0100

Specification No. 1

On December 31, 2007, at 2220 hours or so, Respondent made a street stop of Tristan Edwards. Edwards testified that he was doing nothing unlawful when Respondent stopped him. Respondent gave various reasons for stopping Edwards. At trial, Respondent stated that there was a radio run for a past robbery by a firearm-wielding individual who was wearing a bulletproof vest. Respondent asserted that Edwards was wearing such a vest or just its fabric shell. At his CCRB interview, Respondent added that he observed a bulge in Edwards's waistband. He never stated, at trial or during his CCRB or IAB interviews, that he stopped Edwards because his brown jacket or hoodie matched the transmitted description.

It was not disputed that the stop of Edwards was forcible, thus requiring reasonable suspicion. Cf. People v. Pines, 99 N.Y.2d 525, 527 (2002). Reasonable suspicion consists of a level of knowledge which would lead an "ordinarily prudent and cautious" person, see People v. Cantor, 36 N.Y.2d 106, 112-13 (1975), under the circumstances, to believe a crime has been, is being, or is about to be committed. See People v. Roque, 99 N.Y.2d 50, 54 (2002). Respondent

is charged in the first specification of the second case with stopping Edwards without reasonable suspicion.

Temporal or spatial proximity of a suspect to a robbery can supply reasonable suspicion.

See People v. Tatum, 39 A.D.3d 571 (2d Dept. 2007) (reasonable suspicion to detain defendant in light of, inter alia, spatial and temporal proximity to robbery); People v. Wiley, 32 A.D.3d 1352 (4th Dept. 2006) (reasonable suspicion where, inter alia, defendant was stopped about five blocks from burglary scene). But the proximity has to be close in time or space. Cf. People v. Ramos, 74 A.D.3d 991, 992 (2d Dept. 2010) (reasonable suspicion existed where general descriptions of the suspects were broadcast, one of which matched defendant, the apprehension was in close proximity to the crime, and there was a short passage of time between the crime and the apprehension); People v. Stevenson, 281 A.D.2d 323 (1st Dept. 2001) (defendant was apprehended shortly after shooting, in close proximity to place of occurrence, and matched radio description, including distinctive white hoodie and gold tooth).

The robbery in this case took place at a store located at 858 Flatbush Avenue, between Linden Boulevard and Martense Street, around 2040 hours. The perpetrator was reported to be heading on Martense toward Bedford Avenue, one block east of Flatbush Avenue (see RX D, Sprint report). The stop was initiated at the corner of Bedford Avenue and Clarkson Avenue, three blocks up from Martense. While this is close physically, a stop at 2200 hours, nearly 1 ½ hours later, essentially negates any usefulness of the robbery to provide reasonable suspicion. Cf. People v. Braxton, 250 A.D.2d 533 (1st Dept. 1998) (distance between crime scene and detention did not negate reasonable suspicion because suspect could have traveled within minutes by car, and in fact was leaving livery car when detained).

In any event, the Sprint report does not mention a bulletproof vest (Respondent claimed that one of the robbery's responding officers went over the air with this information), a backup officer, Chaparro, did not see any vest on Edwards, Respondent made no mention of it in his Activity Log (DX 1), and failed to describe how he recognized Edwards's clothing as being the outer shell of a bulletproof vest as opposed to any other kind of vest type of outerwear. People can be expected to wear such clothing in December.

Respondent stated that he wrote something about the vest on the back of the summons he issued to Edwards for disorderly conduct, but the Department did not have the back of the summons in its possession for the trial. Respondent testified that he issued the summons for "the raise of public alarm in the area" and "the fighting and flailing his arms at the Officers," specifically agreeing with the Advocate that it was not illegal to wear a bulletproof vest. Thus, the issuance of a disorderly-conduct summons itself, for the reasons given by Respondent, would not have indicated that Edwards was wearing such a vest.

Furthermore, the mere presence of a waistband bulge, without an indication that it resembled a weapon, does not provide reasonable suspicion. See People v. Manuel, 220 A.D.2d 263 (1st Dept. 1995). As with the alleged bulletproof vest, Respondent made no mention of a bulge in his Activity Log.

In sum, the Department established that Respondent did not have reasonable suspicion to make a forcible stop of Edwards. While Edwards testified that Respondent removed his firearm, as charged in the specification, Respondent denied this. As discussed in Specification No. 3, infra, the Court did not find Edwards to be a credible witness. Therefore, Respondent is found Guilty in Part of Specification No. 1.

Specification No. 2

In the second specification, Respondent is charged with improperly searching Edwards by putting his hands inside his pockets and lifting up his shirt. Respondent did not testify that he searched Respondent incident to a lawful arrest. In fact, he was not actually under arrest. Rather, Respondent searched Edwards because of the bulletproof vest, it was New Year's Eve, when many fire guns in celebration, and Edwards ran from the police.

As noted, the evidence indicated that there was no bulletproof vest. Furthermore, while running from the police, along with other specific circumstances suggesting criminal activity, can provide reasonable suspicion, see People v. Reyes, 69 A.D.3d 523, 525-26 (1st Dept. 2010), here there were no such other circumstances. New Year's Eve does not give officers the right to stop people on suspicion of weapons possession. In any event, the search that Respondent performed went beyond the frisk allowed by reasonable suspicion and required, as the Advocate correctly stated, probable cause, which Respondent a fortiori did not possess. He therefore is found Guilty of Specification No. 2.

Specification No. 3

In the third specification, Respondent is charged with abuse of authority by threatening to beat up Edwards. Edwards asserted that Respondent told him, “[S]hut the fuck up before I beat you up.” Respondent denied doing so.

The Department argued that Respondent was not a credible witness. He had a history of telling untruths to both CCRB and IAB about his conduct in both the CCRB and unregistered gun matters. Therefore, he was unworthy of belief.

The logical fallacy in the Department's argument is that because Respondent is incredible, what Edwards says must be true. The latter conclusion does not flow from the former fact. To believe Edwards's claims about Respondent, the Court must address Edwards's credibility.

Edwards was difficult to follow and at times was barely comprehensible. He was on parole for robbery at the time of the incident and returned to prison at some time during the CCRB investigation for a parole violation. He also brought a lawsuit against the police in this matter and there were signs that he was intoxicated when he went to the hospital long after sunrise on New Year's Day. He was argumentative on the stand and appeared to be uninterested in the process. There really was nothing other than his claims to establish the charge. The Court cannot rely on his mere statements as they had no credibility. As such, Respondent is found Not Guilty of Specification No. 3.

Specification Nos. 4-6

The final specifications in this case bridge together all of the charges against Respondent. The stop of Edwards took place on December 31, 2007. He made a CCRB complaint thereafter. Before CCRB could interview Respondent about the incident, however, Respondent was shot by [REDACTED], on February 29, 2008. Due to recovery time, Respondent was not interviewed by CCRB until July 24, 2008.

It was not disputed that Respondent stated five untrue things in his CCRB interview. These were: (1) Respondent stopped Edwards at the corner of Bedford and Clarkson and was never on [REDACTED]; (2) he did not use force; (3) he did not handcuff Edwards; (4) Edwards was not placed in a Department vehicle; and (5) no other officers arrived as backup.

The CCRB investigator reported Respondent to IAB for what appeared to her to be an attempt to impede the investigation.

In his IAB interview and at trial, Respondent gave various reasons for not giving true answers, but denied failing to cooperate intentionally with CCRB (Specification No. 5), or trying to impede their investigation (Specification No. 6), by failing to give a "full and accurate" account. For the place of the stop (1), Respondent stated at the interview that he did not know why the CCRB investigator was asking, questioned her authority to ask, and finally said that he simply gave an unintentionally erroneous answer. For force (2), Respondent stated at the interview that he was distracted and thought that CCRB's definition of force was different from NYPD's. For handcuffing (3), Respondent stated at the interview that he had not recalled at the time whether he handcuffed Edwards, clarified this at a subsequent CCRB interview, did not usually handcuff summons suspects, and did not understand why it would matter. For placement in a Department vehicle (4), Respondent stated at the interview that he did not see anything wrong with placing him in the car, did not think about the question, and clarified the matter in the second interview. Respondent offered no explanation at the interview for the matter of the backup officers (5).

There was no evidence that the shooting, the physical or emotional recovery, or the narcotic medications had anything to do with Respondent's answers at the CCRB interview. He never mentioned his personal situation there and was alert and present for the entire course of the interview, asserting that he had an independent recollection of the incident. In fact, Respondent never testified that the shooting and its aftermath were any effect on the CCRB interview.

Respondent claimed at the IAB interview and at trial that he did not, at the time of the CCRB interview, remember the true answers to many of CCRB's questions. If that was the case,

he should have answered that he did not recall. In fact, he admitted to IAB that he knew he could answer this way. And if he truly was distracted or was not giving the matter much thought, the easiest thing to do was to say he did not remember. Instead, Respondent answered unequivocally. This suggests that he intentionally deceived the CCRB investigator into believing things that were not true.

The same can be said of Respondent's claims that he answered a certain way because of the nature of CCRB. He essentially claimed to IAB that CCRB was an inferior investigatory agency and he could answer their questions any way he wanted, truthfully or not. Respondent noted at trial that he did not see the import of some of the key CCRB questions and did not take the CCRB interview seriously. These were telling admissions. They revealed that Respondent lied to CCRB because he did not see why their questions were important and therefore did not care about giving true answers. Respondent essentially was playing with them. And he had no reason to answer with such a contemptuous attitude unless he was attempting to block their inquiry into his conduct.

As such, the Court concludes that Respondent attempted to impede CCRB's investigation by failing to give a "full and accurate" account. Therefore he is found Guilty of Specification No. 6. It follows that he failed to cooperate with the CCRB investigation, so he also is found Guilty of Specification No. 5.

The fourth specification charges that Respondent could not give an accurate account to CCRB because he did not make a complete notation of the event in his Activity Log and failed to fill out other required paperwork, like the UF-250. This allegation is inconsistent with the Department's main charge, which was that Respondent deliberately lied. It is unclear how having the paperwork would have enabled a liar to give a truthful account.

In any event, police paperwork was brought up only once at the CCRB interview. This is not surprising, as the failure by Department members to file the proper documents is not within the jurisdiction of the CCRB. When, at the outset of the interview, the investigator asked what Respondent's sector was on the day of the incident, he said that he did not recall. When the investigator asked if he had his Activity Log to refer to, he said that he did not. She remembered this when she asked him what Department vehicle he was in, and moved on. Respondent asserted at the interview that he had an independent recollection of the incident.

Moreover, the specification alleges that Respondent also was unable to provide an accurate account because he "did not prepare any other required NYPD paperwork," aside from the Activity Log. In fact, Respondent admitted at trial (in contradiction to his claim at the CCRB interview) that no UF-250 was prepared for the stop. The allegation is speculative because it would depend on whether Respondent put enough details in the UF-250 he never filled out.

In sum, the Department's argument about the utility of non-completed documents is speculative. Thus, Respondent is found Not Guilty of Specification No. 4.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 11, 2005. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty of serious misconduct. After he was shot by [REDACTED] with his unsecured service weapon during an off-duty incident in February 2008, investigators

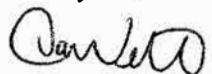
discovered that he was harboring an unregistered gun for his incarcerated [REDACTED] He then interfered with the investigation by stating at his official Department interview that he was not aware of [REDACTED] criminal record. In fact, he had listed details of that record on his application paperwork with the Department.

Prior to the shooting, in December 2007, Respondent made a street stop of Tristan Edwards. Edwards made a CCRB complaint. Both the stop and search of Edwards were improper. But the more serious misconduct occurred when Respondent was interviewed by CCRB investigators, months after the shooting. He lied to them, blatantly and repeatedly, on the location of the incident, the use of force and handcuffing, arrival of backup officers, and placement in a Department vehicle. He did so for no apparent reason other than disdain for the CCRB and thinking he was entitled to impede their investigation. The Court sympathizes with Respondent for being shot by [REDACTED], but the record revealed that the shooting had absolutely nothing to do with his interference in the CCRB's investigation.

Respondent harbored an illegal gun for [REDACTED] Person B. That would be bad enough. See Case No. 71605/97 (Jun. 17, 1998) (traffic enforcement agent dismissed for illegal possession of loaded rifle, defaced handgun and other weapons). Respondent, however, compounded this misconduct by lying to investigators about his knowledge of Person B's criminal record. Members of this organization are not allowed to impede investigations into their misconduct by concocting false stories about their actions. Far from mere false denials to investigators, Respondent engaged in extensive misconduct involving two separate schemes to deceive the Department, one about the gun and another about the stop of Edwards. This kind of untrustworthiness and ethical dishonesty disqualifies Respondent from being a police officer.

Accordingly, the Court recommends that Respondent be DISMISSED from employment with the Department. See Case No. 81667/06 (Apr. 26, 2007) (six-year member with no prior disciplinary record terminated for false statements during CCRB and Department interviews; he falsely stated that he was not present at scene of police incident, and fabricated an alibi; he also attempted to influence testimony of witness in official Department investigation), confirmed sub nom. Foster v. Kelly, 55 A.D.3d 403 (1st Dept. 2008) (penalty was not conscience-shocking); Case No. 78295/02 (Sept. 23, 2004) (six-year member terminated for lying to investigators about his ties to a group with whom he had been found after the group was smoking marijuana; several were minors and had alleged that the officer bought alcohol for them).

Respectfully submitted,


David S. Weisel
Assistant Deputy Commissioner – Trials

APPROVED


JUN 12 2013
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ANTHONY MCLOUD
TAX REGISTRY NO. 938979
DISCIPLINARY CASE NOS. 2008 0215 & 2009-0100

Respondent received an overall rating of 3.0 "Competent" on his last three annual performance evaluations. He has been awarded two medals for Excellent Police Duty and one for Meritorious Police Duty.

[REDACTED]

For your consideration.


David S. Weisel
Assistant Deputy Commissioner – Trials